

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 374 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No
- 

STATE OF GUJARAT

Versus

RANJITSINH GAMBHIRSINH DABHI

-----

Appearance:

Mr. S.R.Divetia, Addl. P.P. for the appellant-State

Mr. B.S.Supehia for Respondent

-----

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 05/04/99

ORAL JUDGEMENT

(Per : Panchal, J.)

The question which arises for consideration of the Court in this appeal is, whether the offence committed by the respondent is punishable under section 302 of the Indian Penal Code or Part-II of Section 304 of

the Indian Penal Code. This question arises in the following circumstances:

2. Deceased Govindbhai Sardarji Thakor was residing in Mohanlal ni Chawl, Gomtipur, Ahmedabad. On May 28, 1990 at about 8.30 P.M. after taking dinner, he went out of his house to purchase bidi and match-box and also to bring his minor son who was playing outside the chawl of his residence. When he went out, his mother, wife and other family members were in the house. After an hour or so, 2 - 3 children came to the house of the deceased and informed Shantaben who was mother of the deceased that some quarrel had taken place between the deceased and respondent, as a result of which, the respondent had inflicted a knife blow on the abdomen of the deceased. On receiving the said information, Shantaben went to the place of incident and found her son lying there bleeding profusely. Shantaben arranged for removal of deceased to Shardaben Hospital in a rickshaw owned by Prahladbhai Nanjibhai Raval. According to Shantaben, on way to Shardaben Hospital, deceased informed her that a sudden quarrel had taken place with the respondent, as a result of which, the respondent had given a blow with knife on abdomen of the deceased and run away. The deceased was admitted in emergency ward of Shardaben Hospital, where he was treated by Dr. Kathad Arsibhai Ramabhai. At the hospital, first information report was lodged by Shantaben. On the strength of the said information, investigation was started and the respondent was arrested on May 29, 1990. During the course of investigation, weapon alleged to have been used in commission of the offence was recovered pursuant to the information provided by the respondent. Initially, offence punishable under section 307 I.P.C. was registered, but during the course of treatment Govindbhai expired and, therefore, offence under section 302 I.P.C. was added. On expiry of Govindbhai, his dead body was sent for postmortem and autopsy was performed by Dr. Gaurang Govindbhai Kothari. The investigating officer had recorded statements of witnesses who were conversant with the incident in question. At the conclusion of investigation, respondent was chargesheeted for the offence punishable under section 302 I.P.C. read with section 135 of the Bombay Police Act, 1951. As the offence punishable under section 302 I.P.C. is exclusively triable by Court of Sessions, the case was committed to Sessions Court for trial where it was numbered as Sessions Case No.208/90. The learned Additional City Sessions Judge had framed charge against the respondent for the offence punishable under section 302 I.P.C. read with section 135 of the Bombay Police

Act. The charge was read over and explained to the respondent, who pleaded not guilty to the charge and claimed to be tried. Therefore, prosecution examined; (1) Shantaben Sardarji Thakor, PW 1 at Exh.16, (2) Shaileshkumar Chhaganlal, PW 2 at Exh.21, (3) Kirankumar Rameshchandra, PW 3 at Exh.23, (4) Harcharan Kanjimal Sharma, PW 4 at Exh.24, (5) Dr. Kathad Arsibhai Ramabhai, PW 5 at Exh.30, and (6) Dr. Gaurang Govindbhai Kothari, PW 6, Exh.31, to bring home guilt to the accused. The prosecution also produced documentary evidence, such as inquest report at Exh.7, panchnama of place of incident at Exh.8, postmortem notes prepared by Dr. Gaurang Kothari at Exh. 10, report received from Forensic Science Laboratory at Exh.14, order promulgated by Commissioner of Police under section 37(1) of the Bombay Police Act, 1951 prohibiting carrying on arms, knives, spears, guns etc. at Exh.15, first information report lodged by Shantaben at Exh.26 etc. to prove its case against respondent. On appreciation of evidence led by the prosecution, learned Judge held that it was proved that the respondent had inflicted blow on the abdomen of the deceased, which ultimately resulted in his death, but it was not proved by the prosecution that respondent had inflicted the said blow with intention to cause death of the deceased and therefore, the respondent was guilty of an offence punishable under section 304 Part-II of the Indian Penal Code. In view of the above-referred to findings, the learned Additional City Sessions Judge by judgment and order dated March 20, 1991 acquitted the respondent of the offence punishable under section 302 I.P.C., but convicted him under section 304 Part-II of I.P.C. read with section 135(1) of the Bombay Police Act sentencing him to suffer R.I. for five years and pay a fine of Rs. 1000/-, i/d. to undergo S.I. for three months, giving rise to present appeal. We may mention that no separate punishment was imposed on the respondent under section 135(1) of the Bombay Police Act.

3. Mr. S.R. Divetia, learned Counsel for the appellant submitted that the respondent was armed with deadly weapon before quarrel took place and, therefore, intention to cause death of deceased Govindbhai ought to have been attributed to the respondent. It was claimed that as per the medical evidence, injury was sufficient in the ordinary course of nature to cause death and evidence of medical officer, who performed autopsy, indicated that intestine was cut as well as all the parts of intestines were also damaged and the wound had gone so deep that because of injury, 1500 MLCC blood had collected in the stomach region and, therefore, the respondent ought to have been convicted under section 302

I.P.C. The learned Counsel stressed that the respondent had caused stab injury to the deceased with such a force that ultimately it had proved fatal and, therefore, his conviction under section 304 Part-II of I.P.C. is not justified at all.

4. Mr. B.S.Supehia, learned Counsel for the respondent contended that the deceased was a head strong person and because of altercation which had preceded the incident, one blow with knife was given by the respondent without any premeditation and, therefore, conviction of the respondent under section 304 Part-II I.P.C. should not be disturbed by the Court. It was claimed that the evidence of eye witness Shaileshkumar Chhaganlal, PW.2 Exh.21 shows that the incident in question had taken place on the spur of the moment without premeditation on the part of the respondent and, therefore, the State appeal directed against acquittal of the respondent under section 302 I.P.C. should be dismissed.

5. We have heard the learned Counsel for the parties at length and we have also taken into consideration record of the case. The fact that the respondent was the author of injury caused to the deceased is not in dispute. That fact is amply proved by eye witness Shaileshkumar Chhaganlal. The evidence of eye witness also stands corroborated by deposition of mother of deceased before whom deceased had oral dying declaration. Therefore, finding recorded by the Trial Court that the respondent had caused injury to the deceased is eminently just and is hereby upheld. The evidence of Shantaben Sardarji Thakor recorded at Exh.16 shows that the deceased had informed her that altercation had taken place between the deceased and respondent and the respondent had given one blow with knife on abdomen of the deceased. Though Shantaben denied the suggestion made on behalf of the respondent that the deceased was detained under the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Ordinance, 1985, the evidence of investigation officer Mr. Harcharan Kanjimal Sharma recorded at Exh.25 clearly establishes that the deceased was detained as a dangerous person under the provisions of the Gujarat Prevention of Anti-Social Activities Ordinance, 1985 pursuant to order of detention dated July 2, 1985 made by the Commissioner of Police, Ahmedabad City. In this case, , there is only one eye witness, namely, Shaileshkumar Chhaganlal, who was examined at Exh.21. According to the eye witness, incident had taken place on May 28, 1990 between 10.00 P.M. and 10.30 P.M. and an altercation had preceded the incident. According to the witness, he had seen the

respondent giving one blow to the deceased and thereafter running away from place of incident. Though the prosecution examined as many as six witnesses, prosecution has failed to bring on record the motive which prompted the respondent to give blow to the deceased. It is true that the injury was inflicted on vital part of the body and with great force, which ultimately resulted into death of the deceased, but by that fact alone, one cannot conclude that offence committed by the respondent is punishable under section 302 I.P.C. and attending circumstances cannot be lost sight of. IIInd Part of Section 304 I.P.C. would be attracted if there is only knowledge that the bodily injury is likely to cause death, but there is no intention to cause death of the victim. Where the accused had no intention to cause the particular injury resulting into the death of the victim, yet he may be deemed to have had knowledge that the death might be caused by his act, the offence would fall under Part-II of Section 304 and not under section 302 I.P.C. The medical evidence on record indicates that when the deceased was brought and admitted to emergency ward of Shardaben Hospital, he was conscious, but he died in the hospital during the course of treatment. The postmortem report read with evidence of Dr. Gaurang Kothari recorded at Exh.31 makes it clear that if artery had not been cut, the deceased would not have suffered profuse bleeding and death could have been avoided. Though the medical officer stated in his deposition that the injury was sufficient in the ordinary course of nature to cause death, we are of the opinion that the evidence on record is not sufficient to infer intention on the part of the respondent to cause death of the deceased. The prosecution has failed to prove motive, nor it is proved that there was any enmity between the deceased and the respondent. Though the deceased had left his house at 9.30 P.M. and incident had taken place at 10.30 P.M. the prosecution has not led any evidence to explain as to what was done by deceased between 9.30 P.M. and 10.30 P.M. Having regard to the totality of the circumstances viz. (i) there is only one injury, (ii) there was no premeditation, (iii) there was some altercation between the deceased, who was a head strong person and the respondent, (iv) total absence of enmity between the respondent and deceased, (v) the death had occurred not immediately, but during the course of treatment and absence of evidence as to what was done by the deceased or where was he after leaving his house, one can only say that the respondent must be attributed the knowledge that he was likely to cause an injury which was likely to cause death of the deceased. It cannot be said that the

accused intended to cause that particular injury which resulted into death of the deceased. Under these circumstances, we are of the opinion that the respondent is rightly convicted of an offence punishable under section 304 Part-II of I.P.C. and no error is committed by the learned Judge in not convicting him under section 302 I.P.C. The appeal, therefore, cannot be accepted and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of the impugned judgment.

\*\*\*\*\*

(patel)